

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	:	
	:	
Petition for approval of delivery services	:	01-0423
tariffs and of residential delivery services	:	
implementation plan, and for approval of	:	
certain other amendments and additions	:	
to its rates, terms and conditions.	:	

**DRAFT ADMINISTRATIVE LAW JUDGES' PROPOSED INTERIM
ORDER APPROVING WITH MODIFICATIONS RESIDENTIAL DELIVERY
SERVICE TARIFFS OF COMMONWEALTH EDISON COMPANY**

By the Illinois Commerce Commission:

On December 16, 1997, as part of Public Act 90-561, the Electric Service Customer Choice and Rate Relief Law of 1997 was signed into law amending the Illinois Public Utilities Act, 220 ILCS 5/1-101, *et seq.* (the "Act") by adding a new Article XVI. Included among the amendments to the Act was the addition of Sections 16-104 and 16-108, which address utilities' obligations to offer delivery services, and the rates, terms, and conditions under which those services are offered to both residential and non-residential customers.

Section 16-108(a) requires electric utilities to file proposed delivery service tariffs ("DSTs") with the Illinois Commerce Commission (the "Commission") at least 210 days prior to the date the Act requires a utility to offer such delivery services to eligible retail customers. Pursuant to Article IX of the Act, the Commission has the authority to review, approve, and modify the prices, terms, and conditions of the proposed DSTs not subject to Federal Energy Regulatory Commission ("FERC") jurisdiction. Section 16-108(b) and (c) require the Commission to enter an order approving, or approving as modified, cost-based DSTs no later than thirty days prior to the date such services will be offered. Section 16-104 requires utilities to offer delivery services to residential customers no later than May 1, 2002.

On June 1, 2001, Commonwealth Edison Company ("ComEd", "Edison", or the "Company"), pursuant to the Act, filed with the Commission a Petition (the "Petition") that requested the approval of: (1) a delivery services implementation plan for residential customers; (2) new tariff provisions offering delivery services to residential customers who are eligible for delivery services May 1, 2002; (3) revised and new tariffs for the provision of delivery services to eligible non-residential customers; and (4) other tariffs and tariff amendments.

The purpose of this Interim Order is to approve the filing, by ComEd, of rates for the provision of delivery services to residential retail customers, as required by the Act. ComEd, the Commission's Staff, the City of Chicago, the People of the State of Illinois, the Cook County State's Attorney's Office, the Citizens Utility Board, and AES New Energy, Inc., collectively referred to herein as Joint Movants, have asked the Commission to enter an Agreed Order in Docket No. 01-0664, which directs an audit, limited in scope to rate case (operating and maintenance expense, and rate base) revenue requirement impacts in this Docket (Docket No. 01-0423) of the remedial activities across the entire ComEd transmission and distribution system identified in (A) the reports of ComEd to the Commission and the City of Chicago in September and December 1999, and subsequent reports by ComEd to the Commission and the City of Chicago of the ComEd system rehabilitation program, (B) the reports to the Commission prepared by Vantage Consulting, Inc., in 1999, and by The Liberty Consulting Group in 2000 and 2001, and (C) ComEd responses to the Vantage and Liberty reports. The Commission has granted the motion of the Joint Movants and entered the Agreed Order. The Joint Movants also filed a motion in this Docket requesting the Commission to modify the schedule for completion of this proceeding, and take certain other actions related to the establishment of delivery services rates for ComEd's residential and nonresidential delivery service customers. Given this we need make, and do make, no finding that the rates we approve today will be the same as rates that we would approve or accept for filing at the end of this proceeding. However, as explained in more detail below, we can and do find that based on the record before us, and not based on any settlement or agreement, that the rates that we direct ComEd to file in this interim order are, as stated below, just and reasonable to residential customers. We make no finding or ruling with respect to any other issue raised in the proceeding not expressly addressed herein.

PROCEDURAL HISTORY AND BACKGROUND

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, prehearing conferences were held in this matter before duly authorized Administrative Law Judges (the "ALJs") of the Commission at its offices in Chicago, Illinois, on June 28, 2001, August 28, 2001, September 4, 6, 13, 18, 20, 25, and 27, 2001, and October 17, 26, and 31, 2001. Evidentiary hearings were held on November 1-2, 5-9, and 13-16, 2001, at the offices of the Commission in Chicago, Illinois. At the conclusion of the hearings, on November 16, 2001, the ALJs marked the record "Heard and Taken."

Petitions for leave to intervene were filed prior to the Hearing on behalf of AES NewEnergy, Inc. ("AES NewEnergy"), People of the State of Illinois (the "Attorney General" or "AG"), the Association of Illinois Electric Cooperatives ("AIEC"), Blackhawk Energy Services, LLC ("Blackhawk Energy"), Building Owners and Managers Association of Chicago ("BOMA"), Central Illinois Light Company ("CILCO"), the Cook County State's Attorney's Office ("CCSAO"), the Citizens Utility Board ("CUB"), Dominion Retail, Inc. ("Dominion"), the United States Department of Energy ("DOE"), Enron Energy Services, Inc. ("Enron"), Environmental Law and Policy Center ("ELPC"),

Exelon Energy Company ("Exelon Energy"), Illinois Industrial Energy Consumers ("IIEC"), Illinois Power Company ("IP"), MidAmerican Energy Company ("MEC" or "MidAmerican"), Midwest Generation, LLC ("Midwest"), National Energy Marketers Association ("NEMA"), Nicor Energy, LLC ("Nicor"), Peoples Energy Service Corporation ("Peoples"), Midwest Energy Alliance, LLC, and TrizecHahn Office Properties, Inc. ("TrizecHahn"). These petitions were granted by the ALJs. An appearance was filed by the City of Chicago (the "City"). Dominion subsequently moved to withdraw from this proceeding and was permitted to do so by the ALJs. Midwest Energy Alliance, LLC filed a petition to intervene after the record was closed, which petition was also granted.

ComEd filed direct testimony supporting its Petition on June 1, 2001. On August 23, 2001, Staff, the ARES Coalition, DOE, IIEC, GC, the City (individually, and not part of GC), Midwest, and NEMA filed direct testimony. Exelon Energy also filed proposed direct testimony, but subsequently asked to withdraw that testimony. On September 6, 2001, GC filed additional direct testimony and Staff filed supplemental direct testimony. GC filed supplemental direct testimony on September 14 and 17, 2001, and Staff filed additional supplemental direct testimony on September 19, 2001. ComEd filed its rebuttal testimony on September 18, and 21, 2001, and supplemental rebuttal testimony on October 2, 2001. Staff and other parties filed their rebuttal testimony on October 16, 2001, and GC filed supplemental rebuttal testimony on October 19, 2001. ComEd filed its surrebuttal testimony on October 24, 2001. Staff filed supplemental rebuttal testimony on November 13, 2001. Parties filed corrections to various testimonies.

The following witnesses testified on behalf of ComEd: Lawrence S. Alongi, Director, Distribution Pricing; Michael F. Born, P.E., Consulting Engineer, Distribution Planning Department; Sally T. Clair, Vice President, Technical Services, Training, and Safety; Paul R. Crumrine, Director, Regulatory Strategies & Services; Christopher Lee Culp, Ph.D., Principal and Managing Director at CP Risk Management LLC; David G. DeCampi, Vice President, Engineering & Technical Analysis; John E. Ebright, C.P.A., Controller; Kenneth Gordon, Special Consultant with National Economic Research Associates, Inc., and former Chair of the Massachusetts and Maine Public Utility Commissions; Alan C. Heintz, Vice President at R.J. Rudden Associates, Inc.; David R. Helwig, P.E., Executive Vice President, Energy Operations; Jerome P. Hill, Director of Revenue Requirements; Arlene A. Juracek, P.E., Vice President, Regulatory and Strategic Services; Sharon M. Kelly, P.E., Senior Rate Specialist; Kathleen D. Leitzell, Director, Open Access Implementation; Jeff D. Makholm, Ph.D., Senior Vice President of National Economic Research Associates, Inc.; Calvin K. Manshio, Partner, Manshio and Wallace; Michael J. Meehan, Information Services/Open Access Director; Richard F. Meisheid, II, Principal of Towers Perrin; Steven T. Naumann, P.E., Transmission Services Vice President; Sam Peltzman, Ralph and Dorothy Keller Distinguished Service Professor of Economics in the Graduate School of Business, The University of Chicago; Daniel E. Thone, Director of Planning & Analysis; Philip E. Voltz, Director, New Residential Construction Group; Jennifer T. Sterling, P.E., Director of Tariff

Administration, Transmission Services Department; Pamela B. Strobel, now Chair; James B. Williams, Ph.D., Vice President, Project and Contract Management.

The following witnesses testified on behalf of the Commission's Staff ("Staff"): David A. Borden, Economic Analyst IV in the Energy Division; Carolyn Bowers, Accountant in the Accounting Department of the Public Utilities Division; Janis Freetly, Financial Analyst in the Finance Department of the Financial Analysis Division; Garret E. Gorniak, Accounting Supervisor in the Accounting Department of the Financial Analysis Division; Cheri L. Harden, Rate Analyst in the Rates Department of the Financial Analysis Division; Burma C. Jones, Accountant in the Accounting Department of the Financial Analysis Division; Bruce A. Larson, P.E., Senior Energy Engineer in the Electric Section in the Engineering Department in the Energy Division; Peter Lazare, Senior Economic Analyst in the Financial Analysis Division; Mike Luth, Rate Analyst in the Rates Department of the Financial Analysis Division; Alan S. Pregozen, CFA, Manager of the Finance Department of the Financial Analysis Division; Bryan C. Sant, Accountant in the Accounting Department of the Financial Analysis Division; and Eric P. Schlaf, Ph.D., Economist in the Energy Division.

Blackhawk Energy, Enron, and AES NewEnergy referred to themselves in this proceeding as the "ARES Coalition." The following witnesses testified on behalf of the ARES Coalition: Philip R. O'Connor, Ph.D., Vice President of AES NewEnergy, Inc.; Richard S. Spilky, Director of Pricing and Product Development of AES New Energy, and Marc L. Ulrich, Risk Manager, Utility and Tariff Risk Management of Enron Corp.

BOMA's witness was Sheree L. Brown, Managing Principal of SVBK Consulting Group, Inc.

CILCO's witness was Keith E. Goerss, Director – Sales.

DOE's witness was Dale E. Swan, Ph.D., Senior Economist and Principal with Exeter Associates, Inc.

The AG, the City, CCSAO, and CUB referred to themselves as the "Government and Consumer Parties" or "Government and Consumer Intervenors ("GC"). GC's witnesses were Edward C. Bodmer, Consultant; David J. Effron, Consultant; and David A. Schlissel, Senior Consultant at Synapse Energy Economics, Inc. In addition to presenting witnesses jointly, as noted above, the City presented the testimony of Steven Walter, Deputy Commissioner for Energy Management in the Department of Environment.

IIEC's witnesses were Alan Chalfant, Consultant with Brubaker & Associates, Inc.; and Robert R. Stephens, Consultant with Brubaker & Associates, Inc.

Midwest's witnesses were John T. Long, Vice President and Chief Technical Officer; Phillip W. McLeod, Principal with LECG LLC; and George R. Schink, Ph.D., Director at LECG LLC.

NEMA's witness was Craig G. Goodman, President.

TrizecHahn's witness was Lawrence Haynes, Account Manager for CILCO.

After the evidentiary hearings, ComEd, Staff, GC, IIEC, the ARES Coalition, Midwest, DOE, TrizecHahn, BOMA, NEMA, MidAmerican, and Nicor filed initial briefs. Reply briefs were filed by ComEd, Staff, GC, IIEC, the ARES Coalition, Midwest, TrizecHahn, BOMA, NEMA, and Nicor. GC later filed a corrected reply brief. Draft proposed Orders were filed by ComEd, the ARES Coalition, DOE, Midwest, and TrizecHahn.

We note that ComEd's Petition also requested approval of a delivery services implementation plan for residential customers, which was filed pursuant to Section 16-105. Section 16-105 required ComEd to submit to the Commission a delivery services implementation plan for residential customers no later than August 1, 2001. The delivery services implementation plan is approved in a separate order of this Commission. In addition, several parties raised pre-hearing matters and issues related to confidentiality and admissibility of evidence. Those matters were disposed of by the Commission and the ALJs in prior orders.

Finally, as noted above, on January 23, 2002, the Joint Movants filed a Joint Motion to Modify Schedule and for Related Relief (the "Joint Motion"). The Joint Motion requests the Commission to enter an interim order determining a delivery service revenue requirement and setting residential delivery service rates based on the record in this proceeding by April 1, 2002, in order to comply with the mandate in Section 16-104 of the Act, which requires utilities to offer delivery services to residential customers no later than May 1, 2002, and in order to comply with the mandate in Section 16-108(b) and (c) of the Act, which requires the Commission to enter an order approving, or approving as modified, cost-based DSTs no later than thirty days prior to the date such services will be offered. The Joint Motion further requests the Commission to continue this proceeding for the Commission to make a final determination of the delivery services revenue requirement and both residential and nonresidential delivery service rates based on evidence already in the record as well as evidence related to the results of the Audit directed by the Commission in Docket No. 01-0664. The ALJs conducted a hearing in connection with this Motion on January 25, 2002. Responses were filed to the Joint Motion on January 29, 2002. Replies were filed on February 1, 2002.

As explained in their motion, the Joint Movants have agreed, subject to the Commission's approval, to a process in which an audit occurs and the record then is re-opened in this Docket in order to permit the receipt of relevant evidence regarding or contesting the audit. The audit report itself would be admitted in evidence through one or more legally competent sponsoring witnesses (the auditor itself would not be a party), with all parties reserving the right to contest the validity and correctness of the audit's findings. Under the agreement, the Joint Movants would not contest the admission of the report through such a witness. All parties would be permitted to introduce evidence

from their own witnesses in addressing or contesting the audit report and the auditor witness(es)' evidence. All parties would be permitted to conduct cross-examination, including of the auditor witness(es) as well as the other parties' witnesses, at a further appropriate evidentiary hearing conducted in this Docket before the ALJs in accordance with the applicable law. The ALJs and the parties then would follow the standard process under the Commission's rules: post-hearing briefing (with, at the ALJs' discretion, party-drafted proposed orders), an ALJs' proposed order, exceptions, and replies, culminating in the Commission's entry of a final Order. The Joint Movants' agreement is conditional in that, as more fully set forth in their motion, the Joint Movants waive neither any rights to pursue any and all other appropriate relief in the further proceedings to be conducted in this Docket nor any rights in relation to any other pending or future proceeding, whether before the Commission or otherwise, and in that the Joint Movants entry into and support of the Motion is not to be understood as an admission of any kind on their respective parts.

ComEd filed a Draft Administrative Law Judges' Proposed Interim Order Approving With Modifications Residential Delivery Services Tariffs of Commonwealth Edison Company. ComEd's draft Interim Order proposed establishing tariffs as discussed in Section II of this Interim Order, without prejudice to the further proceedings in this Docket.

I. LEGAL ISSUES AND STANDARDS FOR DECISION

A. Substantive Standards and Policies Governing Requested Rates

ComEd's proposed delivery services tariffs and tariff revisions were filed pursuant to Section 16-108, which requires utilities to file tariffs for the provision of delivery services, and other Sections of the Act. Section 16-108(a) specifies that:

An electric utility shall provide the components of delivery services that are subject to the jurisdiction of the Federal Energy Regulatory Commission at the same prices, terms and conditions set forth in its applicable tariff as approved or allowed into effect by that Commission. The Commission shall otherwise have the authority pursuant to Article IX to review, approve and modify the prices, terms and conditions of those components of delivery services not subject to the jurisdiction of the Federal Energy Regulatory Commission, including the authority to determine the extent to which such delivery services should be offered on an unbundled basis.

Section 16-108(d) specifies that:

The Commission shall establish charges, terms and conditions for delivery services that are just and reasonable and shall take into account customer impacts when establishing such charges. In

establishing charges, terms and conditions for delivery services, the Commission shall take into account voltage level differences.

Thus, under Section 16-108(a) and Section 16-108(d), DSTs adopted in a contested proceeding before the Commission must be just and reasonable to the utility, its stockholders, and its customers. 220 ILCS 5/9-201(c); *Business and Professional People for the Pub. Interest v. Illinois Commerce Comm'n*, 146 Ill. 2d 175, 208, 585 N.E.2d 1032, 1045 (1991).

In addition, Section 16-108(c) provides that “charges” for delivery services “shall be cost based, and shall allow the electric utility to recover the costs of providing delivery services through its charges to its delivery services customers that use the facilities and services associated with such costs.” These costs include “the costs of owning, operating and maintaining transmission and distribution facilities.” Section 16-108(c) also provides that the electric utility shall recover the costs of installing, operating or maintaining facilities for the particular benefit of one or more delivery services customers directly from the retail customer or customers for whose benefit the costs were incurred, to the extent the charges are not recovered through the generally-applicable delivery services tariffs. Section 16-108 also sets forth numerous other requirements with respect to DSTs, including requiring that tariffs define the classes of the electric utility's customers for purposes of delivery services charges and that delivery services be priced and made available to all retail customers electing delivery services in each class on a non-discriminatory basis, regardless of whether the retail customer chooses the electric utility, an affiliate of the electric utility, or another entity as its supplier of electric power and energy.

Other sections of the Act set forth additional requirements pertaining to delivery services tariffs and the provision of delivery services. For example, Section 16-104(b) requires that:

The electric utility shall allow the aggregation of loads that are eligible for delivery services so long as such aggregation meets the criteria for delivery of electric power and energy applicable to the electric utility established by the regional reliability council to which the electric utility belongs, by an independent system operating organization to which the electric utility belongs, or by another organization responsible for overseeing the integrity and reliability of the transmission system, as such criteria are in effect from time to time.

Section 16-104(e) provides that, subject to terms and conditions imposed in accordance with Section 16-108, a retail customer that is eligible to elect delivery services may place all or a portion of its electric power and energy requirements on delivery services. Section 16-118(b) requires each electric utility to file a tariff that allows alternative retail electric suppliers certified by the Commission under Section 16-115, meeting all obligations under Section 16-115A, and authorized to

provide service in a utility's territory ("ARES") and other electric utilities meeting all obligations under Sections 16-115A and 16-116 of the Act other than the host utility (ARES and such other electric utilities other than ComEd are collectively referred to in this Interim Order as "retail electric suppliers", or "RESs") to offer to their customers a single bill covering both the services provided by the RES and the delivery services provided to the customer by the electric utility. Section 16-118(b) further specifies that:

The tariff filed pursuant to this subsection shall (i) require partial payments made by retail customers to be credited first to the electric utility's tariffed services, (ii) impose commercially reasonable terms with respect to credit and collection, including requests for deposits, (iii) retain the electric utility's right to disconnect the retail customers, if it does not receive payment for its tariffed services, in the same manner that it would be permitted to if it had billed for the services itself, and (iv) require the [RES] that elects the billing option provided by this tariff to include on each bill a listing of the charges applicable to such services. The tariff filed pursuant to this subsection may also include other just and reasonable terms and conditions.

Section 16-108 also provides for the imposition and collection of transition charges by the electric utility from delivery services customers. Section 16-102 of the Act defines "transition charge" in a manner that sets out a formula by which transition charges are to be calculated.

The foregoing is a non-exhaustive list of significant provisions of the Act that are applicable to delivery services. Other statutory provisions that are pertinent to particular issues will be discussed in this Interim Order as necessary.

B. Procedural Issues (e.g., Admissibility) Not Addressed in Specific Arguments

The parties have discussed a number of procedural issues in their briefs. All of these issues have been the subject of separate motions on which rulings have already been made, as discussed in introductory sections of this Interim Order. The Commission adheres to the decisions that it has made previously on petitions for interlocutory review and concludes that the requests for additional procedural relief are without merit and should be denied.

C. Other Policy Issues

The parties have raised a variety of policy issues that they contend should be considered by the Commission in reaching its decisions on issues presented in this proceeding. The Commission has taken into account all of the arguments raised by the parties in arriving at its decisions on the questions addressed in the remainder of this Interim Order. Where policy issues have been stressed in connection with arguments

on individual questions, those issues are occasionally discussed in the sections of this Interim Order that deal with the specific questions. However, the absence of a discussion of each policy issue in each section in which parties have contended that the issue has some relevance is not an indication that the Commission has failed to consider the question. It merely reflects the Commission's effort to avoid repetition and to focus on the specific questions presented by the particular issues for resolution.

D. Resolution of the Joint Motion

The Commission, having considered the arguments of all parties, and the evidence in the record, concludes based on the law and that evidence that it should grant the Joint Motion to Modify Schedule and for Related Relief and enter this Interim Order approving with certain modifications the Company's residential delivery service tariffs. As stated in the Finding and Ordering section of this Interim Order, said tariffs are final approved tariffs that are to go into effect May 1, 2002, and they do not require any further Commission action in order to go into effect. The Commission finds that the proposal of the Joint Movants does appropriately balance and accommodate the legal necessity of timely final approved residential delivery service tariffs, the various requests for an audit, and the interests of the parties. In so finding, the Commission is not making any finding as to how it would have ruled in the absence of the Joint Motion on any issue nor making any finding as to any issue that remains pending in this Docket and that may be addressed in the further proceedings to be conducted in this Docket. The Commission has not made any finding that ComEd has or has not met its burden of proof as to any costs that are contained in its revised proposed jurisdictional revenue requirement but that are not incorporated in the jurisdictional revenue requirement on which the charges in the residential delivery service tariffs approved herein are based.

The Commission concludes that, based upon the evidence now in the record, the residential delivery service tariffs approved herein comply with the specific mandates of Sections 16-104 and 16-108 of the Act as well as with the requirement that delivery service tariffs be just and reasonable as to residential customers under Section 16-108 and Section 9-201(c). They permit the election of delivery services by residential customers on terms and conditions that are appropriate. These tariffs are appropriate in light of their impacts on residential customers, will promote efficient competition, and will not have an inappropriate adverse effect on the development of a competitive market in ComEd's service territory.

II. REVENUE REQUIREMENT ISSUES

A. Calculation of Revenue Requirement

The first task in establishing delivery services rates is to determine the costs of providing delivery services, as distinguished from generation or production costs. The resulting delivery services costs must then be allocated between FERC-jurisdictional transmission costs and Commission-jurisdictional distribution and customer costs. Because this Interim Order establishes a revenue requirement used to established

residential delivery services tariffs, the Commission need not make a determination as to the jurisdictional revenue requirement for purposes of all customers. The Commission need only make a determination of a just and reasonable revenue requirement for purposes of the residential delivery service tariffs approved herein.

One of the major issues in this proceeding has been the proper level of ComEd's jurisdictional revenue requirement in light of ComEd's efforts to maintain and improve distribution system reliability from 1999 to date. ComEd initially proposed a jurisdictional revenue requirement of \$1,786,970,000. Over the course of this proceeding, ComEd has agreed to certain adjustments of this proposed revenue requirement that were proposed by various parties and ComEd itself has proposed further downward adjustments. For example, ComEd and GC now support Staff's proposal to use a 8.99% weighted average cost of capital ("WACC"), which is considerably lower than the 9.95% WACC initially proposed by ComEd. Also, ComEd in its rebuttal and surrebuttal testimony and in its initial brief made a number of downward adjustments and also agreed to a number of downward adjustments proposed by Staff and the GC (while opposing others), also reflected in ComEd's revised calculation. The impact of those agreements is that ComEd's initial jurisdictional revenue requirement has been decreased by \$104,265,000 and ComEd now proposes a revised jurisdictional revenue requirement of \$1,682,705,000.

ComEd submitted extensive and detailed evidence in support of its initial and its revised proposed jurisdictional revenue requirement, responded to thousands of questions posed in data requests on the components of the revenue requirement, and produced and made available tens of thousands of pages of documents pursuant to such requests. For example, David DeCampi, Vice President, Engineering & Technical Analysis, submitted extensive and detailed evidence regarding the prudence and justness and reasonableness of ComEd's jurisdictional rate base and operating expenses, including detailed evidence regarding the five largest distribution capital projects from 1998 to 2000. Philip Voltz, Director - Budget & Control, Energy Operations, submitted extensive evidence regarding ComEd's distribution plant and operating expenses, and ComEd's processes for determining and controlling such investments and expenses. Dr. James Williams, Vice President, Project and Contract Management, addressed ComEd's contracting practices and costs incurred in relation to recent distribution capital projects, and testified that ComEd did not pay "premiums" for these projects. ComEd's evidence amply met the quantum of proof in terms of breadth and detail that has been submitted in prior ComEd rate cases for the components of the revenue requirement.

Also, ComEd submitted testimony and exhibits through David Helwig, P.E., Executive Vice President, Energy Operations, showing mathematically that rates based on the 2000 test year and ComEd's initial higher proposed jurisdictional revenue requirement will under-recover ComEd's actual costs because ComEd's net jurisdictional rate base has grown and will continue to grow, e.g., based on the 2001 distribution capital budget and distribution operating expenses through Autumn 2001 and all other things being equal the initial proposal was \$44 million too low. ComEd

Ex. 19.0, pp. 3:45-55, 9:183-11:228; ComEd Exs. 19.1, 19.2. Thus, ComEd's initial proposed jurisdictional revenue requirement was appropriate, just, and reasonable for a provider of reliable and safe delivery services. *Id.* at pp. 2:23-3:55, 4:80-5:100, 9:199-10:120. That is confirmed by the testimony of Arlene Juracek, P.E., Vice President, Regulatory and Strategic Services, who testified that ComEd's initial proposed jurisdictional revenue requirement resulted in a per kilowatt-hour revenue requirement that is in the lower half of peer restructured electric utilities. Juracek Dir., ComEd Ex. 1.0, 20:506-18. Moreover, as noted above, ComEd over the course of this proceeding subsequently has reduced its initial proposed jurisdictional revenue requirement by an aggregate over \$104 million.

Staff's initial brief proposed a jurisdictional revenue requirement of \$1,575,154,000. Staff, in that calculation, included certain adjustments to which ComEd had agreed and numerous downward adjustments to which ComEd had not agreed. Staff in that calculation omitted certain downward adjustments which ComEd had made after its direct case or which had been proposed by GC and agreed to by ComEd after its direct case. Staff's revised proposed jurisdictional revenue requirement, taking into account those omitted downward adjustments, is \$1,567,039,000. Other parties also proposed various adjustments and the GC submitted its own proposed revenue requirement.

Certain parties, including Staff, GC, and the ARES Coalition, questioned whether ComEd's proposed revenue requirement included any increment of distribution capital costs or operating expenses that ComEd would not have incurred but for past imprudence and whether ComEd's proposed distribution operating expenses based on an adjusted 2000 test year represent in various respects a "normal" level of operating expenses or should be adjusted downward, including by use of "normalizing" or "levelizing" adjustments. Those parties proposed various downward adjustments to ComEd's proposed revenue requirement on those grounds, and they also presented various arguments and proposals for an audit of major elements of the Company's costs in light of its "recovery program" efforts. The GC also filed a petition initiating a separate Docket, in which petition the GC requests an audit of certain of ComEd's costs, Docket 01-0664. The ARES Coalition also argued that the Commission as a matter of law should reject any increase in ComEd's non-residential delivery services rates.

In its evidentiary submissions and briefs, ComEd responded to the various challenges that it has proved its revised proposed jurisdictional revenue requirement. ComEd contended that any further downward adjustments to its revised proposed jurisdictional revenue requirement are not warranted. ComEd pointed out that no intervenor had identified a single distribution capital project that ComEd would not have performed but for alleged past imprudence nor a single such project that had a total cost that was not prudent and just and reasonable, apart from Staff witness Larson's contending that ComEd had paid a "premium" on a single transformer and "premiums" in the form of time-related incentives for certain work on the Chicago "six pack". ComEd refuted Mr. Larson as to those points through the testimony of Mr. DeCamppli, Mr. Voltz, and Dr. Williams.

ComEd also presented evidence that an audit was unwarranted through the testimony of, among others, Ms. Juracek, Jerome Hill, Director of Revenue Requirements, Mr. DeCampi, Mr. Voltz, and Dr. Williams. For example, Ms. Juracek testified in part that:

[T]he Commission must act on evidence, not supposition, *ad hominem* attacks, and manufactured claims of 'missing data.' ComEd in this case has produced the testimony of a battery of witnesses defending its revenue requirement and rate base. ComEd has, as I said, produced a vast volume of data concerning its books and records, its capital structure and costs, its assets, its revenues, its customers' usage and costs, its employee compensation, its overheads, and made available 30,000 plus pages of data relating to the planning and project management of virtually every recent material project or system program. All that is in addition to the wealth of data already produced to the Staff and various intervenors in connection with the ongoing monitoring of ComEd's reliability improvement program, the reports of which ComEd offered to produce again. Most parties chose not to review the majority of these data. Not a single intervenor witness, for example, reviewed the collection of planning and project files produced by ComEd. There is no evidence that an audit is required.

(Juracek Sur., ComEd Ex. 41.0, pp. 8:213-9:255). For further example, Dr. Williams testified in part that:

ComEd has already provided an extraordinary amount of information to the intervenors. In response to data requests from the Attorney General's Office, I am aware that my department, along with the planning department, made available an enormous volume of documents for audit. These documents include project justifications, preliminary cost estimates, business cases, alternative scenarios, project schedules, meeting notes, project diagrams, material lists, resource allocation letters, financial documents and engineering drawings, among others. Due to the amount of material requested and the limited timeframe in which we had to provide it, we did not have time to sort through all the files to pull only the requested documents. Therefore, we unreservedly provided every sheet contained in those files, with the exception of certain proprietary documents. At the hearing on September 4, 2001, the representative from the Attorney General's Office stated, 'Since our hearing on last Tuesday I visited ComEd's offices twice and had them copy several documents for my witness ... all of the issues that were brought up in the motion to compel regarding

producing documents have been satisfied for the Attorney general's Office.' (September 4, 2001, Tr. 65, lines 8-18) In terms of volume, I would estimate that we provided approximately 30,000 pages of documents. As stated above, the auditor from the Attorney General's Office made copies of some of these documents for further review. In fact, those documents were numbered and the Attorney General's office copied a total of 13,409 pages from the documents we provided. These documents have been in their possession for over seven weeks. In light of the volume and scope of information we provided, I cannot understand how the intervenors can purport that 'No party other than Edison currently has sufficient information to conduct the necessary analyses [to evaluate the appropriate rate base amount].' (GC Exhibit 4.0, page 17, lines 341-342).

(Williams Sur., ComEd Ex. 47.0, pp. 5:104 - 6:127). ComEd, as well as Staff and IP, also stated that the ARES Coalition's legal argument regarding non-residential delivery service rate increases is wrong, as a matter of law.

Nevertheless, ComEd and other Joint Movants have agreed, as explained above, to a process in which an audit of its 1999 and 2000 recovery program occurs and the record then is re-opened in this Docket in order to permit the receipt of relevant evidence regarding or contesting the audit. This agreement is not an admission by ComEd or any party as to the sufficiency of the evidence previously submitted.

Therefore, after considering the evidence in the record, including evidence as to cost of service, inflation, load growth, and cost causation, and without prejudice to the further proceedings in this Docket, the Commission concludes that the use of a \$1,____,____,____ jurisdictional revenue requirement to establish residential delivery services rates that will be in effect pending entry of the final order in this Docket is just and reasonable. While this revenue requirement will be re-examined in light of the additional evidence that will be offered, we conclude that there is sufficient evidence in the record to support our finding at this time. Thus, while the rates resulting from this revenue requirement will be neither temporary nor subject to refund, our determination is without prejudice to further proceedings in this Docket or to the right of any party to argue for a different revenue requirement in our final order.

B. Selection of Test Year

ComEd determined its proposed jurisdictional revenue requirement (and its smaller revised proposed jurisdictional revenue requirement) using an adjusted 2000 test year. ComEd argued that its selection of 2000 as the test year was appropriate for several reasons. Staff also used an adjusted 2000 test year. No other party proposed a different test year, except that the ARES Coalition proposed a "levelization" methodology that used data from 1994 to 1998 and 2000 and that effectively had no single test year.

The Commission has considered the positions of the parties and the evidence and concludes that use of the adjusted 2000 test year for the purpose of setting the residential delivery services rates approved by this Interim Order is appropriate, without prejudice to the further proceedings in this Docket.

C. Rate Base

ComEd initially proposed a Commission-jurisdictional delivery services rate base of \$4,083,927,000. Given the downward adjustments in ComEd's rate base proposed by GC that ComEd agreed to in its rebuttal testimony, and the further downward adjustment that ComEd voluntarily made to its rate base in its surrebuttal testimony, its revised proposed jurisdictional net rate base is \$4,018,471,000. Staff initially proposed a jurisdictional net rate base of \$4,048,773,000, setting aside Staff's proposed downward adjustment of \$405,161,000 (and the resulting upward adjustments of \$1,035,000 to accumulated depreciation and \$556,000 to Accumulated Deferred Income taxes ("ADIT")) based on use of a labor allocator to functionalize General Plant and Intangible Plant. Staff in that calculation omitted certain other downward adjustments which ComEd had made after its direct case or which had been proposed by GC and agreed to by ComEd after its direct case. Staff's revised proposed jurisdictional net base is \$3,579,709,000 taking into account those omitted downward adjustments and Staff's proposed labor allocator (and resulting upward adjustments for accumulated depreciation and ADIT), or \$3,983,279,000 taking into account those adjustments but setting aside Staff's proposed labor allocator (and resulting upward adjustments). Other parties also proposed adjustments to ComEd's proposed net rate base.

As to all rate base issues, the Commission finds, based on the evidence, that the use of the figure of \$_____,_____,_____ for jurisdictional net rate base for purposes of the jurisdictional revenue requirement employed in this Interim Order is just and reasonable, without prejudice to the further proceedings in this Docket.

1. - 7.

ComEd requests that the ALJs make recommendations, in accordance with the law and the evidence in the record, regarding all of the issues addressed in Section II.C.1 through II.C.7 (including all subsections) of ComEd's Proposed Order filed on December 28, 2001, for purposes of determining the jurisdictional net rate base component of the jurisdictional revenue requirement to be employed for purposes of the residential rates to be established by this Interim Order, without prejudice to the further proceedings in this Docket.

D. Operating Revenues and Expenses

ComEd requests that the ALJs make recommendations, in accordance with the law and the evidence in the record, regarding all of the issues addressed in Section II.D

(including all subsections) of ComEd's Proposed Order filed on December 28, 2001, for purposes of determining the jurisdictional operating expenses component of the jurisdictional revenue requirement to be employed for purposes of the residential rates to be established by this Interim Order, without prejudice to the further proceedings in this Docket.

ComEd notes that said issues include ComEd's variable storm damage expense reserve proposal. ComEd requests that the ALJs determine said issue for purposes of this Interim Order. ComEd contends that said proposal, which is opposed only by Staff, is in the interests of all market participants and should be put in place as soon as is practicable. In addition, the choice of levelization methodology for storm damage will affect the revenue requirement used to set residential rates. ComEd therefore includes the proposed language set forth below. More detailed proposed language may be found in ComEd's Proposed Order filed on December 28, 2001.

4. Storm Damage Reserve

ComEd proposes an accounting reserve treatment for its variable storm damage expenses based on a three year levelization methodology and argues that the storm reserve proposal is in all parties' interests. Only Staff opposed the proposal. Staff opposed the proposal principally on legal grounds: that it ran afoul of the single issue ratemaking doctrine, violated test year principles, and provided for retroactive ratemaking. ComEd responds that Staff's single issue ratemaking doctrine argument is erroneous because that doctrine applies only to base rate cases, *Citizens Utility Board v. Illinois Commerce Commission*, 166 Ill. 2d 111, 137, 651 N.E.2d 1089, 1102 (1995), and because the proposal, which involves setting rates only in the context of a ratemaking proceeding where the full revenue requirement is analyzed using a test year, over time inherently prevents a mismatch of costs and revenues and over-recovery of costs through reconciliation, and is thus consistent with both the doctrine and test year concepts. Voltz Direct, ComEd Ex. 5.0, pp. 23-24; Voltz Rebuttal, ComEd Ex. 24.0 CR, pp. 21-22; Voltz Surrebuttal., ComEd Ex. 46.0, pp. 22, 24-26. Staff also argued that shareholders could benefit from the proposal in one respect in which customers do not, while ComEd argued both that shareholders and customers alike benefit from the proposal (although not necessarily in the same ways) and that no one will be worse off as a result of the proposal. ComEd argues that, absent unlawfulness or some other valid non-economic objection, a proposal that is certain to benefit many or all and that harms none should be adopted from a standpoint of economic efficiency.

The Commission understands and shares Staff's concern that customers not be adversely affected, but in this all agree that they will not be. Indeed, the evidence shows that the storm reserve proposal over time benefits all participants, including many customers, and harms no one. There is nothing unjust or unreasonable about this proposal. On the legal questions, the Commission finds that Staff's single issue ratemaking and test year arguments are inapplicable. While concern regarding retroactive ratemaking is appropriate, the Commission notes that ComEd's proposal

involves setting rates going forward for a uniquely variable and unpredictable cost -- storm damage -- in a prospective ratemaking proceeding. In light of this and in view of FAS 71, establishment of a reserve account for this expense as proposed is not contrary to that principle.

The Commission therefore approves ComEd's reserve proposal. At this time we direct that the reserve be based on a figure of \$____,____,____ for ComEd's variable storm expenses, in accordance with our own determination regarding the amount of said expenses in Section II.D.3.c.ii.b of this Interim Order. The amount of that reserve in future years is, of course, without prejudice to further proceedings in this Docket.

E. Cost of Capital

ComEd requests that the ALJs make recommendations, in accordance with the law and the evidence in the record, regarding all of the issues addressed in Section II.E (including all subsections) of ComEd's Proposed Order filed on December 28, 2001, for purposes of determining the rate of return factor to be applied to the jurisdictional net rate base component of the jurisdictional revenue requirement to be employed for purposes of the residential rates to be established by this Interim Order, without prejudice to the further proceedings in this Docket.

F. Cost of Service and Rate Design

ComEd requests that the ALJs make recommendations, in accordance with the law and the evidence in the record, regarding all of the issues -- as they pertain to residential customers -- addressed in Section II.F (including all subsections) of ComEd's Proposed Order filed on December 28, 2001, for purposes of determining the cost of service methodology and interclass allocation to be employed in the rate design of the residential rates to be established by this Interim Order, without prejudice to the further proceedings in this Docket.

G. Rate Design

Many rate design issues raised in this Docket need not be resolved in this Interim Order. No party contested ComEd's proposed design of residential delivery services rates themselves. In addition, five other rate design issues -- Rider ISS pricing, residential customer eligibility for the power purchase option, the methodology for calculating the single billing option ("SBO") credit, the methodology for calculating metering charges, and the minimum duration on bundled rates for residential delivery service customers who return to bundled rates -- should be addressed in this Interim Order. The remaining rate design issues that have been raised -- such as the issues relating to demand ratchets, billing demand definition, standby service, generators as delivery service customers, high voltage customers, proposed Rider TS, and existing Rider 25 -- will be addressed in the final Order.

1. Rider ISS

ComEd requests that the ALJs make recommendations, in accordance with the law and the evidence in the record, regarding all of the issues addressed in Section II.G.3 of ComEd's Proposed Order filed on December 28, 2001. Residential customers are eligible for proposed Rider ISS, and no issue related to the audit is involved.

2. Residential Customer Eligibility for Rider PPO

Under ComEd's proposal, residential customers are not eligible customers under ComEd's proposed revised Rider PPO. ComEd states that this is appropriate because under Section 16-110 of the Act, an electric utility is not legally required to offer the power purchase option to residential customers. No party argues to the contrary, and the law is clear. The Commission therefore accepts ComEd's position. No issue related to the audit is involved.

3. SBO Credit

ComEd requests that the ALJs make recommendations, in accordance with the law and the evidence in the record, regarding all of the issues -- as they pertain to residential customers -- addressed in Section II.G.6 of ComEd's Proposed Order filed on December 28, 2001, for purposes of determining the residential rates to be established by this Interim Order, without prejudice to the further proceedings in this Docket.

4. Metering Service Charge (Credit)

ComEd requests that the ALJs make recommendations, in accordance with the law and the evidence in the record, regarding all of the issues -- as they pertain to residential customers -- addressed in Section II.G.7 of ComEd's Proposed Order filed on December 28, 2001, for purposes of determining the residential rates to be established by this Interim Order, without prejudice to the further proceedings in this Docket.

5. 24-Month Return to Bundled Service Requirements

For purposes of this Interim Order, the ALJs rendered their recommendations relating to the minimum duration on bundled rates for residential delivery service customers who return to bundled service and on Staff's related proposal for a language change in ComEd's tariff on this subject based on the law and the evidence in the record. It is clear that, under Section 16-103 of the Act, ComEd is entitled to file rates providing for that residential delivery services customers who return to bundled service must remain on such service for 24 months before returning to delivery services. With respect to Staff's recommendation concerning ComEd's proposed tariff language, the

ALJs recommended that the revisions are not required. Based on the evidence, the Commission concurs.

III. Terms and Conditions Issues

A. SBO Credit Eligibility (Customers With Past Due Bundled Service Balances)

ComEd requests that the ALJs make recommendations, in accordance with the law and the evidence in the record, addressed in Section III.A of ComEd's Proposed Order filed on December 28, 2001. Residential customer eligibility is affected by this issue and no issue related to the audit is involved.

B. Enrollment Issues

ComEd requests that the ALJs make recommendations, in accordance with the law and the evidence in the record, addressed in Section III.B of ComEd's Proposed Order filed on December 28, 2001. Residential customer eligibility is affected by this issue and no issue related to the audit is involved.

C. Release and Use of Customer Specific Information

ComEd demonstrates that its plan and tariffs operate to protect the release and use of customer specific information as required by law, including the requirements of Section 16-122 of the Act. No party argues to the contrary.

D. Off-Cycle or Non-Standard Switching for Residential Customers

ComEd requests that the ALJs make recommendations, in accordance with the law and the evidence in the record, regarding all of the issues addressed in Section III.D of ComEd's Proposed Order filed on December 28, 2001, for purposes of determining the residential rates to be established by this Interim Order. No issue related to the audit is involved.

E. General Account Agency Issues

ComEd requests that the ALJs make recommendations, in accordance with the law and the evidence in the record, regarding all of the issues addressed in Section III.E of ComEd's Proposed Order filed on December 28, 2001. Residential customers are affected by these revisions to rates and no issue related to the audit is involved.

F. Value-Added Aggregation Services

ComEd requests that the ALJs make recommendations, in accordance with the law and the evidence in the record, regarding all of the issues -- as they pertain to

residential customers -- addressed in Section III.F of ComEd's Proposed Order filed on December 28, 2001, for purposes of determining the residential rates to be established by this Interim Order. No issue related to the audit is involved.

IV. FINDING AND ORDERING PARAGRAPHS

The Commission, having reviewed the entire record herein, is of the opinion and finds that:

1) ComEd is engaged in the transmission, sale, and delivery of electricity to the public in the State of Illinois, and is a "public utility" as defined in Section 3-105 of the Act and an electric utility as defined in Section 16-102 of the Act;

2) the Commission has jurisdiction of ComEd and of the subject matter hereof;

3) the recitals and facts and conclusions reached in the prefatory portion of this Interim Order are supported by the evidence of record and are hereby adopted as findings of fact;

4) for purposes of this Interim Order, the test year is the 12-month period ended December 31, 2000, with appropriate adjustments; this test year is appropriate for purposes of this Interim Order;

5) for purposes of this Interim Order, ComEd's net jurisdictional delivery services rate base is \$____,____,____,____;

6) for purposes of this Interim Order, ComEd's jurisdictional delivery services revenue requirement is \$1,____,____,____;

7) for purposes of this Interim Order, a just and reasonable rate of return which ComEd should be allowed to earn on its net jurisdictional delivery services rate base is 8.99%;

8) for purposes of this Interim Order, the proposed revisions to ComEd's Delivery Service Tariffs and Riders as to residential customers, as modified by agreement during the course of these proceedings or as further directed in the prefatory portion of this Order, are hereby deemed to be just and reasonable, and ComEd is directed to place these tariff sheets into effect and the tariff sheets shall be applicable to service furnished on and after the effective date, which shall be no sooner than five calendar days after the filing of tariffs in compliance with this order, and no later than May 1, 2002, and said tariffs are final approved tariffs and they do not require any further Commission action in order to go into effect;

9) for purposes of this Interim Order, the cost of service, class revenue allocation, and rate design conclusions reached in the prefatory portion of this Interim

Order are just and reasonable for purposes of this proceeding and the delivery services tariffs filed by ComEd shall be consistent therewith;

10) for purposes of this Interim Order, the rates contained in the tariffs filed pursuant to this Interim Order shall be designed to recover the revenue requirement approved in this Interim Order pursuant to the methodology described in the prefatory portion of this Interim Order;

11) ComEd's use of a storm damage reserve is approved on the terms stated in the body of this Order;

12) ComEd shall file the new tariff sheets authorized to be filed by this Order within 14 days of the date of this Order;

13) Rates established by such tariffs shall not be subject to refund.

IT IS THEREFORE ORDERED that the Joint Motion to Modify Schedule and for Related Relief is GRANTED.

IT IS FURTHER ORDERED THAT the agreement of the Joint Movants reflected in their Joint Motion is conditional, and that Joint Movants do not waive any rights to pursue any and all other appropriate relief in the further proceedings to be conducted in this Docket nor any rights in relation to any other pending or future proceeding, whether before the Commission or otherwise, and in that Joint Movants entry into and support of the agreement is not to be understood as an admission of any kind on their respective parts.

IT IS FURTHER ORDERED THAT ComEd is hereby authorized and directed to file new tariff sheets comprised of delivery services tariffs containing terms and provisions consistent with and reflective of the findings and determinations contained herein.

IT IS FURTHER ORDERED that ComEd shall comply with all Findings of this Order.

IT IS FURTHER ORDERED that, as stated in the body of the Interim Order, the Commission's findings herein are without prejudice to the further proceedings in this Docket.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Interim Order is not final; it is not subject to the Administrative Review Law.

By Order of the Commission this _____ day of _____, 2002.

Chairman